

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 08-64008

DANIEL ORA BURKETT,

Chapter 13

Debtor.

Judge Thomas J. Tucker

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FIRST MUTUAL BANK n/k/a  
First Mutual Sales Finance, Inc.,

Plaintiff,

v.

Adv. Pro. No. 09-4130

DANIEL ORA BURKETT,

Defendant.

\_\_\_\_\_  
**ORDER DENYING DEFENDANT'S MOTION TO COMPEL PLAINTIFF TO  
RESPOND TO DEFENDANT'S DISCOVERY REQUESTS**

This case is before the Court on Defendant's "Motion to Compel Plaintiff to Respond to Defendant's Discovery Requests," filed August 8, 2009 (Docket # 25, the "Motion"). The Motion states that Defendant served his First Request for Admissions, First Set of Interrogatories and First Request for Production of Documents (collectively "Discovery Requests") on July 2, 2009. (Mot. at ¶ 3.) Under the Court's Adversary Proceeding Scheduling Order, which incorporated the parties' Rule 26(f) Report, "all discovery [had to be] commenced in time to be completed by July 31, 2009" (*see* Docket ## 8, 9). The Defendant in this adversary proceeding did not timely serve his Discovery Requests, because they were not served such that discovery would be completed by the July 31, 2009 deadline, as required by the Adversary Proceeding Scheduling Order.

The Motion seeks an order setting aside the above provision of the Adversary Proceeding Scheduling Order under Fed.R.Civ.P. 60(b), and compelling the Plaintiff to respond to the untimely Discovery Requests. (Mot. at ¶ 8.)

Fed.R.Civ.P. 16(b)(4), made applicable to adversary proceedings by Fed.R.Bankr.P. 7016, rather than Fed.R.Civ.P. 60(b), applies. Fed.R.Civ.P. 16(b)(4) provides, in relevant part, that a scheduling order “may be modified only for good cause.” The Court concludes that a hearing on the Motion is not necessary, and that the Motion is not timely, and does not demonstrate good cause to modify the scheduling order. Trial is scheduled for August 25, 2009, and a final pretrial order was entered on August 3, 2009.

Accordingly,

IT IS ORDERED that Defendant’s “Motion to Compel Plaintiff to Respond to Defendant’s Discovery Requests” (Docket # 25), is DENIED.

**Signed on August 11, 2009**

/s/ Thomas J. Tucker  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**